Supreme Court, U. S.
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IN THE

Supreme Court Of The United States

No. ——— 78-32

RODNEY DALE REEVES ..... *Petitioner*

v.

STATE OF ARKANSAS ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

JURISDICTIONAL STATEMENT

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No. ———

RODNEY DALE REEVES ..... *Petitioner*

v.

STATE OF ARKANSAS ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI
TO THE ARKANSAS SUPREME COURT

JURISDICTIONAL STATEMENT

The Petitioner, Rodney Dale Reeves, petitions this Court for a Writ of Certiorari to review the final order and Opinion of the Supreme Court of Arkansas entered April 10, 1978, affirming the Judgment of his conviction for the offense of Theft by Receiving (felony) and submits this statement to show that the United States Supreme Court has jurisdiction of this Petition and that a substantial question is presented.

OPINION BELOW

The Opinion of the Supreme Court of Arkansas is reported in 263 Ark. 227, 564 S.W.2d 503 (1978) (Advance Sheets). The Opinion is set forth in Appendix "A" to the Jurisdictional Statement.

JURISDICTION

The Opinion of the Supreme Court of Arkansas was delivered on April 10, 1978, affirming the Judgment of the Sebastian County Circuit Court sentencing Petitioner to ten (10) years in the Department of Corrections and a fine of $10,000.00 on the offense of Theft by Receiving and being a Habitual Criminal. A Petition for Rehearing was filed on April 25, 1978. The rehearing was denied on May 15, 1978. Notice of Appeal and Notice of Filing For Writ of Certiorari to Review was filed on May 15, 1978. A Motion to Stay the Mandate of the Arkansas Supreme Court and to remain on bond was filed in the Arkansas Supreme Court on May 15, 1978. On May 30, 1978, the Arkansas Supreme Court entered an order granting Petitioner's Motion to Stay Mandate and remain on bond pending appeal to or review by certiorari by the United States Supreme Court.

The jurisdiction of the United States Supreme Court to review this decision by petition for Writ of Certiorari or appeal is conferred by 28 U.S.C. §1257.

UNITED STATES CONSTITUTIONAL PROVISIONS, ARKANSAS CONSTITUTIONAL PROVISION, ARKANSAS STATUTES AND RULES INVOLVED

The United States Constitutional Provisions involved are Amendments 6 and 14 and can be found in U.S.C.A., Constitution, Amendment 6 to 14, page 223.

Amendment 6 provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right * * * to have the assistance of counsel for his defense.

Amendment 14 provides as follows:

> * * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

The Arkansas Constitutional provision involved is Article 2, Section 10 which can be found in Volume 1, page 33 of Arkansas Statutes Annotated (Official Edition).

Article 2, Section 10 provides as follows:

> In all criminal prosecutions the accused shall enjoy the right * * * to be heard by himself and his counsel.

The Arkansas Statutes involved are *Ark. Stat. Ann.* Sections 43-603, 604, 605, 606, 618, 619 and 43-1203. These statutes can be found in Volume 4A at pages 30-35 and page 114.

Ark. Stat. Ann. Sections 43-603, 604, 605, and 606 provide as follows:

> 43-603. Preliminary examination. Where the arrest is made in the county in which the offense is charged to have been committed, the magistrate before whom the defendant is carried, shall forthwith proceed to an examination of the charge; and, if the offense charged be a felony, shall commit, hold to bail or discharge, as the case may be; or, if he have jurisdiction to hear and finally try the charge, shall proceed to final determination and judgment therein.
>
> 43-604. Authority of Magistrate. A magistrate of the county in which a public offense has been commit-

ted, is authorized to examine the charge, and commit to jail or hold to bail the person charged with its commission.

43-605. Procedure. When a person, who has been arrested, shall be brought, or in pursuance of a bail-bond shall come, before a magistrate of the county in which the offense is charged to have been committed, the charge shall be forthwith examined; reasonable time, however, being allowed for procuring counsel and the attendance of witnesses. The magistrate before commencing the examination, shall state the charge and inquire of the defendant whether he desires the aid of counsel, and shall allow a reasonable opportunity for procuring it.

43-606. Subpoenas. The magistrate shall issue subpoenas for witnesses either for or against the defendant, which shall be executed by a peace officer, and shall coerce their attendance by the same process as in the circuit courts.

Ark. Stat. Ann. Sections 43-618 and 43-619 provide as follows:

43-618. When Defendant Discharged. When the examination is closed, if the magistrate is of opinion that there is not sufficient cause for believing that the defendant has committed a public offense, he shall discharge the defendant from custody, and make an entry thereof on the minutes.

43-619. When held for trial. If however, the magistrate is of opinion, from the examination, that there are reasonable grounds to believe the defendant guilty of the offense charged, he shall be held for trial,

and committed to jail, or discharged on (on) bail, if the offense be bailable.

Ark. Stat. Ann. Section 43-1203 provides as follows:

43-1203. Assignment of counsel. If any person about to be arraigned upon an indictment for a felony, be without counsel to conduct his defense, and shall be unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two (2) who shall have free access to the prisoner at all reasonable hours.

The Rules of Criminal Procedure involved are Rules 8.1, 8.2, and 8.3 of the Arkansas Rules of Criminal Procedure and can be found in Volume 4A at pages 451-452.

Rule 8.1 provides as follows:

Prompt First Appearance. An arrested person who is not released by citation or by other lawful manner shall be taken before a judicial officer without unnecessary delay.

Rule 8.2 provides as follows:

Appointment of Counsel.

(a) An accused's desire for, and ability to retain, counsel should be determined by a judicial officer before the first appearance, whenever practicable.

(b) Whenever an indigent accused is charged with a criminal offense and upon being brought before any court, does not knowingly and intelligently waive the appointment of counsel to represent him, the court shall appoint counsel to represent him unless he is charged with a misdemeanor and the court has de-

termined that under no circumstances will imprisonment be imposed as a part of the punishment if he is found guilty.

(c) Attorneys appointed by municipal courts, city courts, police courts, and justices of the peace may receive fees for services rendered upon certification by the presiding judicial officer if provision therefor has been made by the county or municipality in which the offense is committed or the services are rendered.

Rule 8.3 provides as follows:

Nature of First Appearance.

(a) Upon the first appearance of the defendant the judicial officer shall inform him of the charge. The judicial officer shall also inform the defendant that:

(i) he is not required to say anything, and that anything he says can be used against him;

(ii) he has a right to counsel; and

(iii) he has a right to communicate with his counsel, his family, or his friends, and that reasonable means will be provided for him to do so.

(b) No further steps in the proceedings other than pretrial release inquiry may be taken until the defendant and his counsel have had an adequate opportunity to confer, unless the defendant has intelligently waived his right to counsel or has refused the assistance of counsel.

(c) The judicial officer, if unable to dispose of the case at the first appearance, shall proceed to decide the question of the pretrial release of the defendant. In

so doing, the judicial officer shall first determine by an informal, non-adversary hearing whether there is probable cause for detaining the arrested person pending further proceedings. The standard for determining probable cause at such hearing shall be the same as that which governs arrests with or without a warrant.

QUESTION PRESENTED

1. Does the opinion and decision of the Arkansas Supreme Court affirming the judgment of the Sebastian County Circuit Court deprive the Petitioner of his right to counsel at a critical stage in the proceedings when he was denied appointed counsel at his preliminary hearing in the Fort Smith Municipal Court?

STATEMENT

Petitioner, Rodney Dale Reeves, was charged by information filed in Sebastian County Circuit Court on November 17, 1976, with Theft by Receiving in violation of *Ark. Stat. Ann.* §41-2206, a Class "C" felony, and for being a Habitual Criminal, Acts No. 280 of 1975, S 1001 (a section now superseded by Act 474 of 1977, §4; *Ark. Stat. Ann.* §41-1001, Repl. 1977). The information alleged that petitioner on August 27, 1976, received a stolen 1973 Volkswagen automobile, the property of Dr. W. Ely Brooks.

On October 15, 1976, an information was filed in Fort Smith Municipal Court charging Petitioner with the offense of theft by receiving and an arrest warrant was issued thereon. On October 16, 1976, Petitioner appeared in Municipal Court (examining Court), was arraigned, found to be indigent, was assigned the Public Defender as counsel, and preliminary hearing was set for November 1, 1976.

On October 27, 1976, the Sebastian Prosecuting Attorney filed a petition for a hearing on Petitioner's indigency status to determine if he was entitled to assigned counsel. On November 1, 1976, a hearing was held in Municipal Court on petitioner's indigency status. He was represented at this hearing by the Public Defender. The Municipal Court found petitioner not to be indigent, directed that he retain counsel of his choice and rescheduled the preliminary hearing for November 8, 1976, later reset for November 16, 1976, to give Petitioner more time to hire counsel.

On November 16, 1976, Petitioner appeared without counsel and advised the court he did not have the funds to hire an attorney. The Municipal Court held the preliminary hearing and Petitioner was not represented by counsel. No Motion to Suppress evidence was filed. Petitioner was given

the right to cross-examine witnesses, and given the opportunity to testify (he declined). The State was represented by the Prosecuting Attorney, it presented witnesses, and Petitioner was bound over to Circuit Court for trial.

On March 24, 1977, Maupin Cummings, Circuit Judge on Exchange, found the Petitioner to be indigent and appointed the Public Defender to represent him at trial. The Public Defender advised the court of a conflict of interest and on April 7, 1977, the Circuit Court appointed a private member of the Arkansas Bar Association to represent Petitioner at his trial.

On April 7, 1977, appointed counsel filed a Motion in Circuit Court with Affidavit attached, requesting another preliminary hearing where Petitioner would have the assistance of counsel. On April 22, 1977, a hearing was held on the motion, testimony was presented, arguments made and the Circuit Court denied the Motion.

Trial was held on April 26-27, 1977, and Petitioner was found guilty and given the maximum sentence of ten (10) years and a fine of $10,000.00 by the jury. Judgment was entered by the trial court on the verdict of the jury and Petitioner perfected an Appeal to the Arkansas Supreme Court.

On April 10, 1978, the Arkansas Supreme Court delivered its opinion and decision affirming the judgment of the Sebastian County Circuit Court. The Supreme Court held that Petitioner had failed to show any prejudice by reason of the denial of counsel at his preliminary hearing.

Petitioner petitions this Court for a Writ of Certiorari to review the final judgment of the Arkansas Supreme Court.

ARGUMENT

Petitioner believes that the question presented herein is substantial and requires plenary consideration and warrants briefs on the merits and oral argument for resolution of the question. The reason the question is substantial is set out below.

The opinion of the Supreme Court of Arkansas holding that counsel was not required at a critical stage in the proceedings (preliminary hearing) has confused the holdings of this Court in *Coleman v. Alabama,* 399 U.S. 1, 90 S.Ct. 1999, 26 L. Ed. 2d 387 (1970) and *Gerstein v. Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L. Ed. 2d 54 (1975).

In order to present this contention of confusion by the Arkansas Supreme Court in applying these two cases it is necessary to discuss general legal principles and the principles of the two cases as they apply to the Arkansas procedure.

An accused charged with a criminal offense has the right to counsel. *Powell v. Alabama,* 287 U.S. 45, 53 S.Ct. 55, 77 L. Ed. 158 (1932). Amendment 6 to the *United States Constitution* and Article 2, Section 10 of the *Arkansas Constitution* provide that in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his defense. See, 21 Am. Jur. 2d *Criminal Law,* Section 318, page 347. If the accused cannot afford his own privately retained counsel he is entitled to the appointment of an attorney. *Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L. Ed. 2d 799 (1963) and *Argersinger v. Hamlin,* 407 U.S. 25, 92 S.Ct. 2006, 32 L. Ed. 2d 530 (1972).

The pertinent statute concerning assignment of counsel is *Ark. Stat. Ann.* Section 43-1203. It provides that the court

has a duty to appoint counsel if an accused is not able to employ his own attorney. The applicable rule concerning appointment of counsel is Rule 8.2 of the Arkansas Rules of Criminal Procedure.

A probable cause hearing for an arrested person is provided for in Rule 8.3 of the Arkansas Rules of Criminal Procedure which sets out the nature of an arrested person's first appearance before a magistrate. A preliminary examination or hearing is provided for in *Ark. Stat. Ann.* Sections 43-601 to 43-631.

Amendments 4 and 14 to the *United States Constitution* require a probable cause hearing for arrested persons. *Gerstein v. Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L. Ed. 2d 54 (1975). The holding of a preliminary hearing in Arkansas under our applicable statutes (*Ark. Stat. Ann.* Sections 43-601 — 43-631) is discretionary. *Ellingberg v. State,* 254 Ark. 199, 492 S.W.2d 904 (1973). However, if one is held, the defendant is entitled to counsel as it is a critical stage in the proceedings. *Graves v. State,* 256 Ark. 117, 505 S.W.2d 748 (1974), citing *Coleman v. Alabama,* 399 U.S. 1, 90 S.Ct. 1999, 26 L. Ed 2d 387 (1970).

Now, we come to the point where the Arkansas Supreme Court has confused this Court's holdings in *Coleman* and *Gerstein.*

Rule 8.2 of the Arkansas Rules of Criminal Procedure appears to require the assignment of counsel to indigents at their first appearance in court after being arrested. However, Rule 8.3 of the Arkansas Rules of Criminal Procedure provides that the nature of the first appearance in court is that the judicial officer shall first determine by an informal, nonadversary hearing whether there is probable cause for detaining the arrested person pending further proceedings.

This hearing is required by the Fourth Amendment to the United States Constitution, but is not a critical stage in the prosecution that would require appointed counsel because it is of a non-adversary character. *Reeves v. State,* 261 Ark. 384, 548 S.W.2d 822 (1977), citing *Gerstein v. Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L. Ed. 2d 54 (1975) (The same Rodney Dale Reeves as herein and the same proceedings). Petitioner can agree with this limited holding concerning the application of Rule 8.3. However, the proceedings in this case developed further than the *mere* probable cause hearing.

These proceedings developed to the preliminary hearing stage of the proceedings as provided for in *Ark. Stat. Ann.* Sections 43-605 to 43-631. This preliminary hearing stage of the proceedings is a critical stage in the prosecution in Arkansas and would require the appointment of counsel. *Graves v. State,* 256 Ark. 117, 505 S.W.2d 748 (1974), citing *Coleman v. Alabama,* 399 U.S. 1, 90 S.Ct. 1999, 26 L. Ed. 2d 387 (1970).

The preliminary examination is a formal hearing as it is in Alabama. *Ark. Stat. Ann.* Section 43-605 provides that an accused has the right to the aid of counsel; *Ark. Stat. Ann.* Section 43-606 provides that the magistrate shall issue subpoenas for or against the defendant; *Ark. Stat. Ann.* Section 43-607 limits the number of witnesses; *Ark. Stat. Ann.* Section 43-608 provides for continuances; *Ark. Stat. Ann.* Sections 43-615 and 43-616 provide for the exclusion and separation of witnesses from the courtroom; *Ark. Stat. Ann.* Section 43-617 provides that the names and residences of witnesses be stated by the magistrate; *Ark. Stat. Ann.* Section 43-618 provides that the defendant will be discharged if the magistrate is of the opinion that there is not sufficient

cause for believing the defendant has committed a public offense; *Ark. Stat. Ann.* Section 43-619 provides that if the magistrate is of the opinion that there are reasonable grounds to believe the defendant guilty of the offense charged he shall be held for trial; *Ark. Stat. Ann.* Section 43-621 provides for commitment to jail or bail after examination; and, *Ark. Stat. Ann.* Sections 43-626 — 43-627 provide for the preservation of the preliminary hearing testimony for possible use later under certain circumstances.

It can be seen that this is a fomal, *critical stage* in the proceedings. Although it is similar to a probable cause hearing, it is a subsequent, formal, adversary type proceeding that requires counsel under the 6th and 14th Amendments to the *United States Constitution* and Article 2, Section 10 of the Arkansas Constitution because it is a critical stage in the prosecution. (*Coleman v. Alabama, supra*).

The Fourth Amendment does not require counsel at a probable cause hearing. (*Gerstein v. Pugh, supra*). The Sixth and Fourteenth Amendments require counsel at a preliminary hearing. (*Coleman v. Alabama, supra*). The Supreme Court of Arkansas has confused the two proceedings and denied Petitioner his right to appointed counsel at this critical stage in the proceedings.

In this critical stage in the prosecution, if the Petitioner had been provided counsel, he could have filed and presented a Motion to Suppress evidence, made an intelligent decision on whether to testify or not, and made inquiries in line with the reasons set out in *Coleman, supra.* Petitioner was denied this right by all tiers of the Arkansas Courts. (Municipal, Circuit and Supreme) The right should not be denied by this Court.

CONCLUSION

Petitioner submits that for the above reasons jurisdiction should be noted and the Petition accepted for decision.

Respectfully submitted,

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Attorney for Petitioner

APPENDIX "A"

RODNEY DALE REEVES V. STATE OF ARKANSAS

CR-77-220

Opinion delivered April 10, 1978
(Division I)

Appeal from
Sebastian Circuit Court, Fort Smith District

JOHN HOLLAND, Judge; Affirmed
GEORGE ROSE SMITH, Justice

The appellant was charged with the theft of a 1973 Volkswagen car by receiving — an offense that is essentially what was formerly known as receiving stolen property. Ark. Stat. Ann. §41-2206 (Repl. 1977). Upon trial by jury he was found guilty and was sentenced, as a habitual offender, to 10 years' imprisonment and to a $10,000.00 fine. Several points for reversal are argued by court-appointed counsel.

The State's proof showed that on the night of August 27, 1976, the appellant Reeves and Mike Lovell, a police informant, drove together in Reeves's car from Fort Smith to Fayetteville for the purpose of stealing a Volkswagen. In Fayetteville the two men found a car of the kind that Reeves wanted. Lovell actually stole the car and followed Reeves back to Fort Smith. There they drove the Volkswagen into a garage next to Reeves's residence and used specialized tools to remove the several V.I.N.'s (vehicle identification numbers) from the stolen car. Lovell was paid $150 for his assistance when he left at about dawn. The police obtained a search warrant and searched the premises, finding the vehicle in question and several other

Volkswagens from which the V.I.N's had been similarly removed.

It is first argued that the court should have granted a defense motion for a month's continuance and a defense motion for a second preliminary hearing. Our difficulty with respect to both motions arises from the absence of any *facts* tending to show why the court abused its discretion in denying the motions.

Neither motion was supported by the proffer of testimony. Counsel simply argued that 18 days was not sufficient time for him to prepare the case for trial and that a second preliminary hearing should be ordered because Reeves, as a result of having been found not to be an indigent, was not represented by counsel at the first preliminary hearing. It is argued here, as it was in the court below, that the issues in the case were so complex that it could not be properly prepared for trial in 18 days and that evidence favorable to Reeves might have been developed at a second preliminary hearing. We have, however, no facts to go on except the record of the actual trial as abstracted by counsel. That record indicates that Reeves received a fair trial and was well represented. In matters of this kind, turning essentially upon the many practical considerations that must be taken into account in setting a case for trial, we must depend upon the sound judgment of the trial court unless a clear abuse of discretion is made to appear. That showing has not been made in this case.

It is next argued that the court should not have allowed the State to prove Reeves's commission of other offenses; that is, that the officers found on Reeves's premises other Volkswagens from which the V.I.N.'s had been removed. The State did not actually try to show that the other ve-

hicles had been stolen, though no doubt the jury so inferred. Even so, the proof was admissible as tending to show Reeves's knowledge that the 1973 Volkswagen in question had been stolen. Evidence of other crimes may be admissible to show knowledge. Ark. Stat. Ann. §28-1001, Rule 404 (b) (Supp. 1977). It makes no difference that the prosecution had already shown by a witness that Reeves had participated in the theft of the Volkswagen. The State was entitled to prove its case as conclusively as it could. That Reeves possessed other vehicles from which the V.I.N.'s had been removed in a similar manner was competent evidence to suggest to the jury that he had so removed the V.I.N.'s from the Volkswagen in question for the purpose of preventing its possible identification as stolen property; in short, he must have known that it was stolen.

Third, the appellant questions the admissibility of the State's proof of previous convictions under the habitual criminal statute. Three of the four convictions that were proved showed that the sentences had been suspended. It is argued that such a judgment is not a "conviction" within the meaning of the habitual criminal law.

In *Rogers v. State,* 260 Ark. 232, 538 S.W.2d 300 (1976), we held that under the habitual criminal statute in effect in 1975, a judgment imposing a suspended sentence was admissible as a conviction. Act 228 of 1953, as amended. That statute was superseded by the Criminal Code, which became effective on January 1, 1976, under which the case at bar was tried. Act 280 of 1975, §1001 (a section now in turn superseded by Act 474 of 1977, §4; Ark. Stat. Ann. §41-1001 [Repl. 1977]). We do not see, however, any such difference between the language of the statute construed in the *Rogers* case and that of the 1975 Code as to indicate a

change in the legislative intention. On this point counsel for the appellant argues that in *Rogers* we relied in part upon a reference in the 1953 statute's emergency clause to "persons *committing* more than one felony," a phrase not to be found in the 1975 Code. The Code, however, was a comprehensive act made up of hundreds of sections. There was no reason for the legislature to repeat the quoted phrase in its emergency clause. There is, however, a reason for us to hold, as we do, that if the legislature meant for its earlier language to include judgments imposing a suspended sentence, as we decided in *Rogers,* then the legislature had the same intention in re-enacting substantially the same language in the Criminal Code. It may be noted, in passing, that the 1977 statute, not applicable to this case, may have adopted the view now urged upon us by this appellant. See Ark. Stat. Ann. §41-1001 (Repl. 1977).

It is also argued that the State's proof of two previous convictions, both in Sebastian Circuit Court, was inadmissible, because the circuit clerk's testimony about them was based upon the court's docket entries. It is true that a docket notation is not the entry of a final judgment. *Herrod v. Larkins,* 183 Ark. 509, 36 S.W.2d 667 (1931). The habitual criminal law applicable to this case provides, however, that a previous conviction may be proved by any evidence that satisfies the trier of fact that the defendant was convicted. Act 280 of 1975, §1003. Under the Uniform Rules of Evidence, preliminary questions about the admissibility of evidence are decided by the trial court. Ark. Stat. Ann. §28-1001, Rule 104 (a) (Supp. 1977). Under Rule 803 (8) of those rules, a record of a public office setting forth its regularly conducted and regularly recorded activities is not hearsay (which was the objection made in the trial court). Here the trial court decided that the testimony of its own

clerk, based upon its own docket entries, was proper for the jury's consideration. The Uniform Rules of Evidence are to be construed to the end that the truth may be ascertained and proceedings justly determined. Rule 102. Here there is no suggestion whatever that the docket entries did not correctly reflect the court's judgments in the earlier cases in which Reeves was convicted. We find no sound basis for saying that the trial judge's ruling was wrong.

Other minor points are argued, but they are without merit.

Affirmed.

We agree. Harris, C.J., and Hickman and Howard, JJ.

APPENDIX "B"

RODNEY DALE REEVES V. STATE OF ARKANSAS

CR-77-220

NOTICE OF FILING FOR
WRIT OF CERTIORARI TO REVIEW

Comes the Appellant-Petitioner, Rodney Dale Reeves, and hereby gives notice of filing for Writ of Certiorari to review the final decision and opinion delivered on April 10, 1978, by the Arkansas Supreme Court affirming the Judgment of the Sebastian County Circuit Court, dated April 26, 1977, and designates the entire Judgment, Opinion and Decision of the Arkansas Supreme Court to be reviewed by Certiorari.

The review by Certiorari is taken to the United States Supreme Court under the provisions of 28 U.S.C. §1257(3).

/s/ Robert S. Blatt

CERTIFICATE OF SERVICE

I, Robert S. Blatt, hereby certify that I have served a copy of the foregoing Notice of Filing for Writ of Certiorari to Review on the Attorney General by mailing a copy of same to Honorable Bill Clinton, Justice Building, Little Rock, Arkansas 72201.

/s/ Robert S. Blatt

Filed on May 15, 1978, in the Arkansas Supreme Court.

APPENDIX "C"

RODNEY DALE REEVES V. STATE OF ARKANSAS

CR-77-220

NOTICE OF APPEAL

Comes the Defendant-Appellant, Rodney Dale Reeves, and hereby gives notice of appeal from the decision and opinion delivered on April 10, 1978, by the Arkansas Supreme Court, affirming the Judgment of the Sebastian County Circuit Court, Fort Smith District, dated April 26, 1977, and designates the entire Judgment, Opinion and Decision of the Arkansas Supreme Court as appealed from.

The appeal is taken to the United States Supreme Court under the provisions of 28 U.S.C. §1257.

/s/ Robert S. Blatt

CERTIFICATE OF SERVICE

I, Robert S. Blatt, hereby certify that I have mailed a copy of this Notice of Appeal to Appellee, State of Arkansas, by mailing a copy to its counsel of record, Attorney General of Arkansas, by depositing same in the United States Post Office, with first class postage, prepaid, to this address, Justice Building, Little Rock, Arkansas 72201.

/s/ Robert S. Blatt

Filed on May 15, 1978, in the Arkansas Supreme Court.